

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th JULY, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 1801/2021**

JILU KUMAR @ JIYA LAL

..... Petitioner

Through Mr. Mukesh Kalia, Advocate

versus

THE STATE (N.C.T OF DELHI)

..... Respondent

Through Mr. Amit Chadha, APP for the State.
Mr. Anil Kumar Gupta, Advocate for
the complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.36/2021 dated 16.01.2021 registered at Police Station Okhla Industrial Area for offences under Sections 307, 323 and 34 IPC.

2. The petitioner is the brother of the father-in-law of the complainant. The allegation in the FIR is that on 15.01.2021 at about 2:30 P.M. the complainant was physically assaulted by her husband, Rohit. It is stated that the complainant informed her parents that she has been beaten by Rohit, her husband. It is stated that the mother and father of the complainant came to her house, spoke to her in-laws and went away. It is stated that after her parents left, in the evening, the complainant was once again beaten up. The

complainant's father-in-law, Lala Ram, called up her brother Deepak Kumar and asked him to take the complainant with him. It is stated that at about 8 P.M. in the evening, complainant's brother Deepak Kumar came to her house. It is stated that the complainant narrated the whole incident to her brother that she has been beaten up by her husband and in-laws and that she wants to go back to her paternal house. It is stated that when the brother of the complainant wanted to leave with the complainant, her husband, Rohit, refused to send her with her brother, and the brother of the complainant and her husband had a fight. It is stated that, in the meantime, the petitioner and one Bhanwar, came there. It is stated that Bhanwar got a butcher's knife and gave it to the father-in-law of the complainant and asked him to kill the brother of the complainant. It is stated that on his instigation, Rohit (husband of the complainant), the petitioner herein and Bhanwar caught hold of Deepak and the father-in-law of the complainant Lala Ram inflicted injuries on Deepak with a knife. It is stated that on being assaulted, Deepak gave a call to his parents and told them to come over immediately because he has been stabbed by a knife. It is stated that after the phone call was made, the complainant's father, mother and elder sister came to take Deepak to the hospital. It is stated that at that time the father-in-law of the complainant went inside and brought a stick and assaulted the father of the complainant and he also assaulted the complainant and her sister. It is stated that the mother-in-law of the complainant caught hold her hair and punched her stomach. It is stated that after the incident the complainant went with her parents to Batra Hospital. The father of the complainant called the police. It is further stated in the FIR that the complainant, her father and her elder sister received treatment in the hospital and her brother Deepak was shifted

to Safdarjung Hospital since his condition was worsening. On the said complaint, FIR No.36/2021, dated 16.01.2021 was registered. The petitioner was arrested on 29.01.2021.

3. The petitioner filed an application for bail before the Sessions Court which was rejected by the learned Additional Sessions Judge, Saket Courts *vide* order dated 18.05.2021, on the basis of the nature of injuries suffered by Deepak. The petitioner has, thereafter, filed the instant petition.

4. It is pertinent to mention here that the mother-in-law of the complainant approached this Court by filing a bail application, being BAIL APPLN. 685/2021, under Section 438 Cr.P.C for grant of bail in the event of arrest in the instant FIR. This Court after hearing all the parties granted anticipatory bail to the mother-in-law of the complainant by an order dated 05.03.2021.

5. Notice was issued on 25.05.2021 and the Status Report has been filed.

6. Heard Mr. Mukesh Kalia, learned counsel appearing for the petitioner, Mr. Anil Gupta, learned counsel appearing for the complainant and Mr. Amit Chadha, learned APP appearing for the State and perused the documents.

7. Mr. Mukesh Kalia, learned counsel for the petitioner states that the petitioner is in custody since 29.01.2021 and the charge-sheet has been filed. He contends that the petitioner is being falsely implicated by the complainant and her family. He states that the present case arises out of a matrimonial dispute and in matrimonial disputes there is a tendency to implicate all the family members. To substantiate his contention, the learned counsel for the petitioner draws the attention of this Court to the FIR and contends that the incident occurred on 15.01.2021 at 9:00 PM whereas the

FIR was registered only the next day i.e. 16.01.2021 at 3:15 PM. The learned counsel for the petitioner draws the attention of this Court to the portion in the FIR where it is mentioned that on the night of 15.01.2021 the Police was informed about the incident. He states that when the Police reached the hospital and enquired about the condition of Deepak (injured/victim) they were told that he is not in a condition to give a statement. He states that the FIR further shows that when the Police reached the house of the complainant, the complainant and her family members declined to give their statement on the ground that they need rest and they will give their statement the next day. The learned counsel for the petitioner therefore contends that the FIR is not a true narration of the facts and the petitioner has been falsely implicated. The learned counsel for the petitioner states that the petitioner is in custody for more than four months now and due to COVID-19 the possibility of this case proceeding further is remote and therefore he be granted bail.

8. *Per contra*, Mr. Amit Chadha, learned APP strongly opposes the bail application by contending that grievous injuries have been inflicted on the injured/victim and the possibility of the petitioner threatening the witnesses cannot be ruled out.

9. Mr. Anil Gupta, learned counsel for the complainant contends that due to the assault, the stomach/belly portion of the injured/victim had to be opened and he received more than 42 stitches for the same. He also draws the attention of this Court to an application given by the family members of the complainant stating that the relatives of the accused are threatening them and therefore they be given police protection.

10. The petitioner is in custody since 29.01.2021, Charge-sheet has been

filed. This Court finds considerable force in the arguments of the learned counsel for the petitioner that the possibility of implicating other family members of the husband of the complainant cannot be ruled out. A perusal of the FIR shows that the FIR was registered after 18 hours of the incident. The FIR shows that the Police had tried to take the statement of the family members of the complainant but they denied to give their statements. Normally the natural conduct of any victim/family members of the victim is to give the statement to the Police at the earliest and that too when the Police approaches the victim/family members of the victim for recording their statement. The conduct of the complainant and her family members thus creates a doubt. The father-in-law of the complainant, Lala Ram and the husband of the complainant, Rohit, who are the main assailants, are in custody. Mother-in-law of the complainant has already been granted anticipatory bail by this Court vide order dated 05.03.2021.

11. In the facts and circumstances of this case, this Court is inclined to grant bail to the petitioner on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of Rs.50,000/- with two sureties of the like amount, one of them should be a relative of the petitioner, to the satisfaction of Trial Court/Duty Magistrate.
- b) The petitioner shall not leave NCT of Delhi without the prior permission of the Court.
- c) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- d) The memo of parties shows the address of the petitioner as R/o H.No. E-33/1, Sanjay Colony, Okhla Phase -II, New Delhi. He shall

continue to reside at the same address and if he changes the address he shall immediately intimate the same to the IO.

e) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses or exert pressure on the complainant or any of her immediate family members.

f) The family of the complainant stays at Govindpuri and the petitioner stays at Okhla which is 5 Kms. away from Govindpuri. The petitioner is directed not to enter Govindpuri till the complainant, her father, mother and other public witnesses are not examined.

g) Violation of any of these conditions will result in the cancellation of the bail given to the petitioner.

11. This bail application is disposed of in the abovementioned terms.

12. Let a copy of the order be transmitted to the concerned Jail Superintendent.

SUBRAMONIUM PRASAD, J.

JULY 16, 2021

Rahul